

MT LEGISLATIVE HISTORY

Chapter 231 1982

Bill H (S) 299

Original bill & hist. ✓C

H. Committee on Business & Labor

S. Committee on Business & Industry

Hearing Date(s) MAR 13 ✓C

Hearing Date(s) FEB 12 ✓C

 C

 C

 C

 C

 C

 C

Date Out MAR 13 ✓C

FEB 12 ✓C

Did this bill originate in an interim committee? Yes No

Committee

Report

SENATE FINAL STATUS

SB 298 INTRODUCED BY NEUMAN, HIMSL, BARDANOUVE, ET AL.
CREATE NEW BOARD OF INVESTMENTS; ALLOCATE TO
DEPARTMENT OF COMMERCE
BY REQUEST OF GOVERNOR

2/05	INTRODUCED		
2/05	REFERRED TO BUSINESS & INDUSTRY		
2/05	FISCAL NOTE REQUESTED		
2/11	FISCAL NOTE RECEIVED		
2/17	HEARING		
2/18	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	46	3
2/23	3RD READING PASSED	30	19
TRANSMITTED TO HOUSE			
2/24	REFERRED TO BUSINESS & LABOR		
3/06	HEARING		
3/20	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/28	2ND READING CONCURRED	82	3
3/30	3RD READING CONCURRED	87	9
RETURNED TO SENATE WITH AMENDMENTS			
4/02	2ND READING AMENDMENTS NOT CONCURRED	49	0
4/03	CONFERENCE COMMITTEE APPOINTED		
4/16	CONFERENCE COMMITTEE REPORT		
4/17	2ND READING CONFERENCE COMMITTEE REPORT ADOPTED	41	0
4/20	3RD READING CONFERENCE COMMITTEE REPORT ADOPTED	46	4
HOUSE			
4/14	CONFERENCE COMMITTEE APPOINTED		
4/16	CONFERENCE COMMITTEE REPORT		
4/20	2ND READING CONFERENCE COMMITTEE REPORT ADOPTED	92	3
4/21	3RD READING CONFERENCE COMMITTEE REPORT ADOPTED	90	8
4/21	SIGNED BY PRESIDENT		
4/21	SIGNED BY SPEAKER		
4/21	TRANSMITTED TO GOVERNOR		
4/22	SIGNED BY GOVERNOR		
CHAPTER NUMBER 581 EFFECTIVE DATE: 7/01/87			

SB 299 INTRODUCED BY MEYER, WALLIN
PROVIDE STATUTES OF LIMITATIONS FOR SECURITIES
ACTIONS
BY REQUEST OF STATE AUDITOR AND SECURITIES
COMMISSIONER

2/05	INTRODUCED		
2/05	REFERRED TO BUSINESS & INDUSTRY		
2/17	HEARING		
2/18	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	49	0
2/23	3RD READING PASSED	49	0
TRANSMITTED TO HOUSE			
2/24	REFERRED TO BUSINESS & LABOR		
3/13	HEARING		
3/13	COMMITTEE REPORT--BILL CONCURRED		
3/17	2ND READING CONCURRED	92	2

2

SENATE FINAL STATUS

3/18	3RD READING CONCURRED	93	1
	RETURNED TO SENATE		
3/23	SIGNED BY PRESIDENT		
3/24	SIGNED BY SPEAKER		
3/24	TRANSMITTED TO GOVERNOR		
3/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 231	EFFECTIVE DATE:	3/27/87
SB 300 INTRODUCED BY MANNING, MENAHAN			
	REVISE CONDITION RESULTING IN CLASS C CARRIER		
	CONSIDERED AS CLASS B CARRIER		
2/05	INTRODUCED		
2/05	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/17	HEARING		
2/18	COMMITTEE REPORT--BILL PASSED		
2/20	2ND READING PASSED	49	0
2/23	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
2/24	REFERRED TO HIGHWAYS & TRANSPORTATION		
3/05	HEARING		
3/27	COMMITTEE REPORT--BILL CONCURRED		
3/28	2ND READING CONCURRED	75	0
3/30	3RD READING CONCURRED	97	1
	RETURNED TO SENATE		
4/02	SIGNED BY PRESIDENT		
4/02	SIGNED BY SPEAKER		
4/02	TRANSMITTED TO GOVERNOR		
4/07	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 393	EFFECTIVE DATE:	10/01/87
SB 301 INTRODUCED BY GAGE			
	SCHOOL TRUSTEES TO ESTABLISH RESERVE FUND FOR		
	SPECIAL SCHOOL PURCHASES		
2/06	INTRODUCED		
2/06	REFERRED TO EDUCATION & CULTURAL RESOURCES		
2/11	HEARING		
2/19	ADVERSE COMMITTEE REPORT ADOPTED	46	2
SB 302 INTRODUCED BY JERGSON, WILLIAMS, M., GLASER, ET AL.			
	REQUIRE APPROVAL OF HIGH SCHOOL TUITION FOR ONLY		
	IN-STATE PLACEMENTS		
2/06	INTRODUCED		
2/06	REFERRED TO EDUCATION & CULTURAL RESOURCES		
2/10	FISCAL NOTE REQUESTED		
2/13	HEARING		
2/19	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/23	2ND READING PASSED AS AMENDED	50	0
2/25	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
3/03	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/16	HEARING		
3/24	COMMITTEE REPORT--BILL CONCURRED		
3/24	FISCAL NOTE RECEIVED		
3/28	2ND READING CONCURRED	75	0
3/30	3RD READING CONCURRED	96	2

SENATE BILL NO. 299

INTRODUCED BY MEYER, WALLIN

BY REQUEST OF THE STATE AUDITOR AND SECURITIES COMMISSIONER

IN THE SENATE

FEBRUARY 5, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
FEBRUARY 18, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 19, 1987	PRINTING REPORT.
FEBRUARY 20, 1987	SECOND READING, DO PASS.
FEBRUARY 21, 1987	ENGROSSING REPORT.
FEBRUARY 23, 1987	THIRD READING, PASSED. AYES, 49; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 24, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & LABOR.
MARCH 13, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 17, 1987	SECOND READING, CONCURRED IN.
MARCH 18, 1987	THIRD READING, CONCURRED IN. AYES, 93; NOES, 1.
	RETURNED TO SENATE.

IN THE SENATE

MARCH 19, 1987	RECEIVED FROM HOUSE.
	SENT TO ENROLLING.

1 *Senate* BILL NO. *299*
2 INTRODUCED BY *Mayer*
3 BY REQUEST OF THE STATE AUDITOR AND SECURITIES COMMISSIONER

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PRESCRIBE THE
6 STATUTE OF LIMITATIONS FOR CIVIL AND ADMINISTRATIVE ACTIONS
7 BROUGHT PURSUANT TO THE SECURITIES ACT OF MONTANA; AMENDING
8 SECTIONS 30-10-305 AND 30-10-307, MCA; AND PROVIDING A
9 RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE
10 DATE."
11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 30-10-305, MCA, is amended to read:

14 "30-10-305. Injunctions and other remedies --
15 limitations on actions. (1) ~~Whenever~~ If it appears to the
16 commissioner that any person has engaged or is about to
17 engage in any act or practice constituting a violation of
18 any provision of parts 1 through 3 of this chapter or any
19 rule or order hereunder, he may in his discretion:

20 (a) issue an order directing the person to cease and
21 desist from continuing the act or practice after reasonable
22 notice and opportunity for a hearing. The commissioner may
23 issue a temporary order pending the hearing that remains in
24 effect until 10 days after the hearing on the allegations
25 contained in the cease and desist order is held or that

1 becomes final if the person to whom notice is addressed does
2 not request a hearing within 15 days after receipt of the
3 notice; or

4 (b) without the issuance of a cease and desist order,
5 bring an action in any court of competent jurisdiction to
6 enjoin any such acts or practices and to enforce compliance
7 with parts 1 through 3 of this chapter or any rule or order
8 hereunder. Upon a proper showing, a permanent or temporary
9 injunction, restraining order, or writ of mandamus shall be
10 granted and a receiver or conservator may be appointed for
11 the defendant or the defendant's assets. The commissioner
12 may not be required to post a bond. If the commissioner
13 prevails, he is entitled to reasonable attorneys' fees as
14 fixed by the court.

15 (2) A final judgment or decree, criminal or civil,
16 determining that a person has violated parts 1 through 3 of
17 this chapter in an action brought by the commissioner for
18 such violation, other than a consent judgment or decree
19 entered before trial, is prima facie evidence against that
20 person in an action brought against him under 30-10-307.

21 (3) The commissioner may, after giving reasonable
22 notice and an opportunity for a hearing under this section,
23 impose a fine not to exceed \$5,000 per violation upon a
24 person found to have engaged in any act or practice
25 constituting a violation of any provision of parts 1 through

1 3 of this chapter or any rule or order issued under parts 1
 2 through 3 of this chapter. The fine is in addition to all
 3 other penalties imposed by the laws of this state and must
 4 be collected by the commissioner in the name of the state of
 5 Montana and deposited in the general fund. Imposition of any
 6 fine under this subsection is an order from which an appeal
 7 may be taken pursuant to 30-10-308. If any person fails to
 8 pay a fine referred to in this subsection, the amount of the
 9 fine is a lien upon all of the assets and property of such
 10 person in this state and may be recovered by suit by the
 11 commissioner and deposited in the general fund. Failure of
 12 the person to pay a fine also constitutes a forfeiture of
 13 his right to do business in this state under parts 1 through
 14 3 of this chapter.

15 (4) (a) No administrative or civil action may be
 16 maintained by the commissioner under this section to enforce
 17 any liability founded on a violation of 30-10-201 through
 18 30-10-205 unless it is brought within 2 years after the
 19 violation occurs.

20 (b) No administrative or civil action may be
 21 maintained by the commissioner under this section to enforce
 22 any liability founded on a violation of parts 1 through 3 of
 23 this chapter or any rule or order issued thereunder, except
 24 30-10-201 through 30-10-205, unless it is brought within 2
 25 years after discovery by the commissioner or his staff of

1 the facts constituting the violation.

2 (c) In no event may an action be maintained under this
 3 section to enforce any liability founded on a violation of
 4 parts 1 through 3 of this chapter or any rule or order
 5 issued thereunder unless it is brought within 5 years after
 6 the transaction on which the action is based."

7 Section 2. Section 30-10-307, MCA, is amended to read:

8 "30-10-307. Civil liabilities -- limitations on
 9 actions. (1) Any person who offers or sells a security in
 10 violation of any provisions of 30-10-202 through 30-10-205
 11 or offers or sells a security by means of fraud or
 12 misrepresentation is liable to the person buying the
 13 security from him, who may sue either at law or in equity to
 14 recover the consideration paid for the security, together
 15 with interest at 10% per annum from the date of payment,
 16 costs, and reasonable attorneys' fees, less the amount of
 17 any income received on the security, upon the tender of the
 18 security, or for damages if he no longer owns the security.
 19 Damages are the amount that would be recoverable upon a
 20 tender less:

21 (a) the value of the security when the buyer disposed
 22 of it; and

23 (b) interest at 10% per annum from the date of
 24 disposition.

25 (2) Every person who directly or indirectly controls a

1 seller liable under subsection (1), every partner, officer,
2 or director (or person occupying a similar status or
3 performing similar functions) or employee of such a seller,
4 and every broker-dealer or salesman who participates or
5 materially aids in the sale is liable jointly and severally
6 with and to the same extent as the seller if the nonseller
7 knew, or in the exercise of reasonable care could have
8 known, of the existence of the facts by reason of which the
9 liability is alleged to exist. There shall be contribution
10 among the several persons so liable.

11 (3) Any tender specified in this section may be made
12 at any time before entry of judgment. A cause of action
13 under this statute survives the death of any person who
14 might have been a plaintiff or a defendant. No person may
15 sue under this section:

16 (a) if the buyer has received a written offer, at a
17 time when he owned the security, to refund the consideration
18 paid, together with interest at 10% per annum from the date
19 of payment, less the amount of any income received on the
20 security and he failed to accept the offer within 30 days of
21 its receipt; or

22 (b) if the buyer has received a written offer at a
23 time when he did not own the security in the amount that
24 would be recoverable under subsection (1) upon a tender
25 less:

1 (i) the value of the security when the buyer disposed
2 of it; and

3 (ii) interest at 10% per annum from the date of
4 disposition.

5 (4) No person who has made or engaged in the
6 performance of any contract in violation of any provision of
7 parts 1 through 3 of this chapter or any rule or order
8 hereunder or who has acquired any purported right under any
9 such contract with knowledge of the facts by reason of which
10 its making or performance was in violation may base any suit
11 on the contract. Any condition, stipulation, or provision
12 binding any person acquiring any security to waive
13 compliance with any provision of parts 1 through 3 of this
14 chapter or any rule or order hereunder is void as against
15 public policy and in the public interest.

16 (5) (a) No action may be maintained under this section
17 to enforce any liability founded on a violation of 30-10-202
18 unless it is brought within 2 years after the violation
19 occurs.

20 (b) No action may be maintained under this section to
21 enforce any liability founded on fraud or misrepresentation
22 unless it is brought within 2 years after discovery of the
23 fraud or misrepresentation on which the liability is founded
24 or after such discovery should have been made by the
25 exercise of reasonable diligence.

1 (c) In no event may an action be maintained under this
2 section to enforce any liability founded on fraud or
3 misrepresentation unless it is brought within 5 years after
4 the transaction on which the action is based."

5 NEW SECTION. Section 3. Extension of authority. Any
6 existing authority of the securities commissioner to make
7 rules on the subject of the provisions of this act is
8 extended to the provisions of this act.

9 NEW SECTION. Section 4. Applicability. Sections 1 and
10 2 apply retroactively, within the meaning of 1-2-109, to a
11 securities transaction occurring prior to the effective date
12 of this act for which no action has been commenced within
13 year from the effective date of this act.

14 NEW SECTION. Section 5. Effective date. This act is
15 effective on passage and approval.

-End-

CHAIRMAN--SEN. ALLEN C. KOLSTAD
NORMAL SCHEDULE==> SITE: ROOM 410

DAYS: MON THRU FRI

TIME: 10:00 A.M.

SECRETARY--CAROLYN LINDEN

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0254	1/30	2/11	2/11/87	DO PASS		2/11/87
WALKER, MIKE			PROVIDE THAT OFFICE OF SECURITIES COMMISSIONER IS A CRIMINAL JUSTICE AGENCY			
SB0257	1/30	2/06	2/6/87; 2/11/87	PASS AS AMENDED		2/11/87
THAYER, GENE			REINTRODUCE LOW-INCOME TELEPHONE ASSISTANCE PROGRAM			
SB0263	2/02	2/13	2/13/87; 2/16/87	DO PASS		2/16/87
WILLIAMS, BOB			REMOVE HEARING REQUIREMENT FOR PROJECT FUNDED BY TAXABLE BONDS			
SB0272	2/03	2/18	2/18/87; 2/19/87	PASS AS AMENDED		2/19/87
LYNCH, JOHN (J.D.)			EXEMPT FROM BENEFICIAL USE TAXATION STATE-ACQUIRED RAILROAD PROPERTY			
SB0291	2/05	2/18	2/18/87; 2/20/87	DO PASS		2/20/87
KEATING, THOMAS F.			ALLOW OUT-OF-STATE BANK TO ACQUIRE OR BE ACQUIRED BY IN-STATE BANK			
SB0293	2/05	2/19	2/19/87	DIED IN COMMITTEE		-----
BOYLAN, PAUL F.			LEGALIZE, LICENSE ELECTRONIC VIDEO TWENTY-ONE MACHINES			
SB0294	2/05	2/17	2/17/87	DO PASS		2/17/87
MEYER, DARRYL			INCREASE CHARGES THAT FARM MUTUAL INSURER MUST PAY FOR EXAMINATION OF BOOKS			
SB0295	2/05	2/17	2/17/87	PASS AS AMENDED		2/17/87
MEYER, DARRYL			EXEMPT FEDERAL CROP INSURANCE AGENTS FROM EXAMINATION REQUIREMENTS			
SB0298	2/05	2/17	2/17/87	PASS AS AMENDED		2/17/87
NEUMAN, TED			CREATE NEW BOARD OF INVESTMENTS; ALLOCATE TO DEPT OF COMMERCE			
SB0299	2/05	2/17	2/17/87	PASS AS AMENDED		2/17/87
MEYER, DARRYL			PROVIDE STATUTES OF LIMITATIONS FOR SECURITIES ACTIONS			
SB0308	2/06	2/18	2/18/87; 2/20/87	PASS AS AMENDED	BUSINESS & LABOR	2/20/87
TVEIT, LARRY J.			ALLOW BLACKJACK IF AUTHORIZED BY VOTERS OF LICENSING JURISDICTION			

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

February 17, 1987

The twenty-second meeting of the Business & Industry Committee was called to order by Chairman Allen C. Kolstad at 10 a.m. on Tuesday, February 17, 1987, in Room 410 of the Capitol.

ROLL CALL: All committee members were present.

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ch 6
CONSIDERATION OF SENATE BILL NO. 299: Sen. Darryl Meyer, Senate District 17, Great Falls, chief sponsor, said the bill would set the statute of limitations for civil and administrative actions brought under Montana's Securities Act. It sets a two year period of limitations. In a 1985 case the Montana Supreme Court ruled that an eight year statute of limitations applies to the civil liabilities section of the securities laws. This bill is a response to that ruling. The bill makes the two year period of limitations apply retroactively to claims that have arisen but that have not yet been filed as lawsuits before the effective date of the act. The bill also provides a "grace period" which preserves the validity of claims for a reasonable period after the enactment of the law (1 year).

PROPOSERS: Kim Schulke, Deputy Securities Commissioner, briefly went over the bill and explained that there are two types of people that can bring an action: (1) the private citizen for securities fraud and registration violations, and (2) the commissioner of securities for the enforcement of the act. She explained her written testimony to the committee members. (EXHIBIT 1) She also stated that there was an amendment that was required, because of a printing error, on page 7, line 12, "1" should be added to the bill.

Bruce McKenzie, General Counsel, D.A. Davidson, Great Falls, said they were most affected by the Supreme Court decision of 1985 and welcomed the bill. He said the Supreme Court in Montana is the only Court that has found that the Securities Act adopted under the Uniform Securities Acts for the states is based on contract. Nowhere in any of the writings is that found, he said. He said they think this would bring Montana back into the norm as far as securities regulation, they appreciate the commissioner's office being responsible to the industry and felt it was a good compromise.

OPPOSERS: There were none.

DISCUSSION OF SENATE BILL NO. 299: Chairman Kolstad called for questions from the committee.

Sen. Thayer asked about the statute of limitations in the bill. Ms. Schulke replied that it would be two years from the date of discovery of the fraud. So, if it isn't discovered within five years it is moot.

12

Chairman Kolstad asked if the bill sets a two year period of limitation which replaces what would normally be an eight year period at the present time. Ms. Schulke said that was correct for registration violations; that is a flat two years. She went on further to say that for fraud, two years from date of discovery there is a cut-off of five years.

There being no further questions from members of the committee, Sen. Meyer closed on SB 299.

CONSIDERATION OF HOUSE BILL NO. 332: Rep. Jan Brown, House District 46, Helena, said this authorizes the Public Service Commission to issue a protective order when it is necessary to preserve trade secrets that are required to carry out regulatory functions and the bill also clarifies the authority of the PSC to do this outside of rate cases.

PROPOSERS: Dennis Lopach, Mountain Bell Attorney, said they had requested the bill and felt it restates the law in the 1981 decision but would be useful to put it in the statutes. The 1981 decision said that the Commission was obligated to protect information with a property interest, or trade secret information, when it required the information in rate cases. Now, in some cases, trade secrets are required outside of rate cases, such as a customer list which would be of great interest to a competitor.

Gene Phillips, Pacific Power and Light Company and Northwestern Telephone Company, said this applies to them in their rate cases in respect to the cost of coal which is used in their generating facilities. The price of coal is a trade secret, should have some protection and for that reason they supported the bill.

Bob Quinn, Montana Power Company, said that for the reasons given previously and also because of a problem with Canadian gas, they urged support of the bill.

Gene Pigeon, Montana-Dakota Utilities Resources Group, also said for the reasons given by the previous proponents, they were in support of the bill.

Tim Baker, Staff Attorney with the Public Service Commission, said the Commission was in support of the bill and believed that the Commission has the power currently that the bill seeks to provide. However, they agreed with the various utilities present that codification of this power would prevent future discrepancies.

OPPOSERS: There were no opposers.

DISCUSSION OF HOUSE BILL NO. 332: Chairman Kolstad then called for questions from the committee.

11

DISPOSITION OF SENATE BILL NO. 299: Ms. McCue said there was a typographical amendment on page 7, line 12 - it should have "1" amended into the bill following "within". Sen. Meyer MOVED ADOPTION OF THE AMENDMENT, seconded by Sen. Thayer. The MOTION CARRIED UNANIMOUSLY.

Sen. Meyer then MOVED SB 299 DO PASS AS AMENDED, seconded by Sen. Hager. The MOTION CARRIED UNANIMOUSLY.

FURTHER DISCUSSION OF SENATE BILL NO. 205: Ms. McCue said there was a proposed amendment for the bill. She said the amendment was the suggestion of Sen. Halligan, that the pharmacist would have to hold onto the voucher for 30 days to give the department an opportunity to audit the voucher. If they didn't respond within that period the pharmacist could negotiate it at the bank.

Sen. Neuman questioned whether there was enough need for this to warrant considering the amendments. Chairman Kolstad suggested that they hold the bill for another meeting. Sen. Neuman asked for a "straw vote" on the concept of the bill. The show of hands indicated there was sentiment in favor of the bill, however, some of the members felt it was a bad bill. The bill will be considered further at a later time.

FURTHER DISCUSSION OF SENATE BILL NO. 222: Chairman Kolstad said they had not received the revised statement of intent for SB 222. Sen. Thayer felt this should be in the department of administration where it could be coordinated more easily and Sen. Farrell had suggested that earlier. It was pointed out it was a revised Fiscal Note rather than a statement of intent for which they were waiting. It was the decision of the committee to hold the bill for a future meeting.

DISPOSITION OF HOUSE BILL NO. 254: Chairman Kolstad said there were amendments proposed by Glen Drake. The amendments were added in the House committee, removed on the House floor, and now being proposed in this committee, however, Rep. Thomas, the sponsor did not want the amendments. Sen. Walker agreed with the feelings of Rep. Thomas, as did Sen. Weeding.

Sen. Thayer MOVED ADOPTION OF THE AMENDMENTS, seconded by Sen. Walker. The MOTION CARRIED UNANIMOUSLY. Chairman Kolstad said these were clarification amendments prepared by Ms. McCue.

Sen. Walker MOVED HB 254 BE CONCURRED IN AS AMENDED, seconded by Sen. Meyer. Sen. Walker stated that he would WITHDRAW HIS MOTION in order that they could go back and take care of the amendments proposed by Roger McGlenn. Sen. Thayer said that Rep. Thomas had objected to the amendments of both Mr. Drake and Mr. McGlenn and recommended they pass the bill without them. Following further discussion, it was the decision of the committee to disregard both those amendments, therefore, Sen. Walker MOVED HB 254 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

STANDING COMMITTEE REPORT

FEBRUARY 17, 19 87

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration SENATE BILL No. 299

FIRST reading copy (WHITE)
color

PROVIDE STATUTES OF LIMITATIONS FOR SECURITIES ACTIONS

Respectfully report as follows: That SENATE BILL No. 299

be amended as follows:

1. Page 7, line 12.
Following: "within"
Insert: "1"

AND AS AMENDED,

DO PASS

~~XXXXXXXXXX~~
~~XXXXXXXXXX~~

SENATOR KOLSTAD,

Chairman.

Business & Industry COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2/17/87

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN	✓		
PAUL BOYLAN	✓		
TOM HAGER	✓		
HARRY H. McLANE	✓		
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER	✓		
CECIL WEEDING	✓		
BOB WILLIAMS	✓		

Each day attach to minutes.

Kim Schulke
Deputy Securities Commissioner
444-5236

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE 2-17-87

BILL NO. SB. 299

Securities Act - Statute of Limitations. SECTION BY SECTION
REVIEW.

Requested by State Auditor and Commissioner of Securities,
Andrea "Andy" Bennett

Section 1. Amendment to 30-10-305.

Section 30-10-305 sets forth the type of enforcement actions which the Commissioner can bring for violations of the Securities Act of Montana. These include cease and desist orders and injunctive actions.

New subsection (4) provides that no administrative or civil action shall be maintained by the Commissioner for violations of the registration provisions of the Securities Act, unless brought within 2 years after the violation occurs. Section 30-10-201 provides for the registration of securities salesmen, broker-dealers and investment advisers. Sections 30-10-202 through -205 provide for the registration of securities.

New subsection (5) provides a statute of limitations for actions based upon violations of the Securities Act other than registration violations. The period of limitation is 2 years after the discovery by the commissioner or his staff, of the facts constituting the violation. Additionally, a final cut-off of 5 years from the date of the transaction sued upon, is stated.

Section 2. Amendment to 30-10-307.

Section 30-10-307, provides for private civil actions based on violations of the registration sections of the securities act, or for the offer or sale of a security by means of fraud or misrepresentation.

New subsection (5) provides that all private civil actions founded upon violations of the registration provisions of the Securities Act, must be brought within 2 years after the violation occurs.

New subsection (6) provides that private civil actions founded upon fraud or misrepresentation must be brought within 2 years after discovery of the fraud or misrepresentation, or after such discovery should have been made by the exercise of reasonable diligence. A final cut-off of 5 years from the date of the transaction sued upon, is also stated.

15

Section 3. Retroactive application of statute of limitations. S.B. 299

This section states that the new statute of limitations shall apply retroactively to all securities actions which could have been filed before the effective date of this Act, but which have not been filed within one year after the effective date of this Act. For securities actions which could have been filed before the effective date of this Act, and which will be filed before one year after the effective date of this Act, the current 8-year statute of limitations applies.

Securities Act - Statute of Limitations. JUSTIFICATION.

On October 3, 1985, the Montana Supreme Court ruled that the statute of limitations which applies to civil actions brought pursuant to 30-10-307, MCA, of the Securities Act of Montana, is 8 years. This is the current statute limitations for all private civil actions brought under the Securities Act.

When the Securities Act of Montana was enacted by the legislature in 1961, the Act contained a 2-year limitation on private civil actions under 30-10-307. In 1967, the legislature eliminated the 2-year statute of limitation, and no limitation period was substituted. The issue as to the statute of limitations for securities act claims did not arise again until 1985 when the Supreme Court decided the limitations period would be 8 years. No statute of limitations has ever been provided for civil or administrative enforcement actions brought by the Commissioner for violations of the Securities Act.

The brokerage community in Montana was very unhappy with the decision of the Supreme Court. The 8 year statute of limitations is the one of the longest such statutes in the nation. On the other hand, from an investor protection standpoint, the 8 year statute of limitations is very favorable.

The Commissioner of Securities proposes this legislation to balance the needs of the brokerage community and the concerns of investor protection. Indeed, the Securities Act provides, in 30-10-102, that the Act shall be construed to:

- (1) protect the investor, persons engaged in securities transactions, and the public interest;
- (2) promote uniformity among the states; and
- (3) encourage, promote, and facilitate capital investment in Montana.

The proposal adequately protects the investor. While it provides a relatively short period in which registration claims must be brought, it provides an ultimate limitations period of 5 years for the more serious fraud violations.

The proposal also promotes uniformity among the states. Most states have a two-year statute of limitations for registration violations. The 5-year statute for fraud is about average,

with the shortest being 2 years from the date of contract, and the longest being two years from date of discovery of the violation, with no ultimate cut-off date.

The proposal encourages capital investment in Montana by providing reasonable limitations on civil and enforcement actions under the Securities Act.

SENATE Business & Industry

EXHIBIT NO. 1

DATE 2-17-87

BILL NO. S.B. 299

COMMITTEE ON

Business & Industry

DATE

2/17/87

VISITORS' REGISTER

NAME

REPRESENTING

BILL #

Check One

Support

Oppose

J. Kim Schulke

State Auditor's Office

299

✓

Keith L. Colbo

Commerce

298

✓

Dane Lewis

Commerce

298

✓

Marty Ash

Cons. Dept

295

✓

James W. Borchardt

State Auditor's Office

294

✓

Bruce A. MacKenzie

D.A. Davidson & Co

299

✓

Fritz Torsberg

Board of Investments

298

✓

Robert M. Fancich

ME&B

298

✓

Michael W. Tumber

visitor

TIM BAKER

PSC

332

✓

John H. McEwen

Admin

298

Dennis Logach

Mountain Bell

332

✓

Jim Manning

Legislative Auditors Off

GENE PHILLIPS

PP&L and NTS

332

✓

BOB O'NEILL

MONT PWR Co.

332

✓

GENE VIGOR

M.D.U. Resources Group

332

✓

Jim Thurbin

Fed. Crop Insurance

295

✓

at MCKelvin

Bd of Forest Mnts

298

✓

STATUS SHEET

50th LEGISLATIVE SESSION

BUSINESS AND LABOR

COMMITTEE

SENATE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NO CONCUR IN A AMEND DATE
299	2/24/87	3/13/87	3/13/87					3/13/87			
313	2/24/87	3/13/87	3/13/87							3/13/87	
314	2/24/87	3/13/87	tabled 3/13/87								
315	3/3/87	3/9/87	3/26/87							3/26/87	
318	2/23/87	3/18/87	3/18/87					3/18/87			
319	2/24/87	3/13/87	tabled 3/13/87								
328	3/3/87	3/10/87	3/26/87							3/26/87	
341	3/3/87	3/10/87	3/20/87							3/20/87	
353	3/13/87	3/20/87	3/26/87							3/26/87	
359	3/3/87	3/18/87	3/18/87							3/18/87	
360	3/3/87	3/18/87	3/20/87					3/20/87			
364	3/03/87	3/11/87	3/11/87					3/11/87			
371	3/13/87	3/20/87	3/26/87							3/26/87	
374	2/24/87	3/13/87	3/13/87								

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
50TH LEGISLATIVE SESSION

March 13, 1987

The meeting of the Business and Labor Committee was called to order by Chairman Les Kitselman on March 13, 1987 at 8:00 a.m. in Room 312-F of the State Capitol.

ROLL CALL: All members were present.

SENATE BILL NO. 280 - Senator George McCallum, Senate District No. 26, Plains, sponsored the bill. Senator McCallum stated that there are problems with the bill and would cause a greater amount of unemployment in Montana. He requested that the bill be tabled.

EXECUTIVE ACTION

ACTION ON SENATE BILL NO. 280

Rep. Jones moved that Senate Bill No. 280 BE TABLED. The motion carried unanimously.

SENATE BILL NO. 319 - Senator Joseph Mazurek, Senate Bill No. 23, Helena, sponsored the bill. Senator Mazurek stated that this bill addressed workers' compensation, and that the Attorney General's opinion was that a water commissioner is an employee of the district judge for workers' compensation purposes. He said a water commissioner is someone that the district judge appoints, sometimes on a temporary basis, to investigate and resolve disputes between irrigators on adjudicated streams, and are full time employees of the irrigation district and would be covered by workers' compensation insurance. He commented that these commissioners that the bill addresses are very limited, appointed for a short time, during an irrigation season to mediate disputes between water users on a particular stream. He said that the district judge does not have funds at his disposal to have workers' compensation coverage for a commissioner that he might hire on a two or three week basis in the summer, therefore, he requested that this bill be introduced.

PROPOSERS

None.

OPPOSERS

None.

PROPOSERS

None.

OPPOSERS

None.

CLOSING

Senator Blaylock made no further comments.

EXECUTIVE ACTION

ACTION ON SENATE BILL NO. 313

Rep. Jones moved that Senate Bill No. 313 BE CONCURRED IN. The motion carried unanimously.

ACTION ON SENATE BILL NO. 319

Rep. Driscoll moved that Senate Bill No. 319 BE NOT CONCURRED IN.

Rep. Simon commented that the bill had many problems, it was even unclear as to how the water commissioners were paid, or who their employer was.

Rep. Brandewie commented that this bill should not be passed, and it can't be clarified. He said if someone gets injured, someone has to pay the workers' compensation, and if exceptions are made it could lead to many problems, and expose many employees to be without coverage.

Rep. Nisbet moved a substitute motion that Senate Bill 319 BE TABLED. The motion carried unanimously.

SENATE BILL NO. 299 - Senator Darryl Meyer, Senate District No. 17, Great Falls, sponsored the bill. Senator Meyer stated this bill was a statute of limitations under the Securities Act, and is requested by the State Auditor.

Kim Schulke, Deputy Securities Commissioner, presented a section by section review of the bill, and statutes of limitations for securities actions in other states. Exhibit Nos. 5 and 6.

PROPOSERS

Bruce MacKenzie, General Counsel, DA Davidson and Company. Mr. MacKenzie stated the unique feature of the securities law is that it imposes liability on individuals who are not

directly committing a fraud, and that is the portion of the bill they are in favor of, and putting a cap of 5 years on that liability. He said this provision brings Montana in conformity with other states so that it is in an average range.

Rick Tucker, representing IDS Financial Services, and as a former Securities' Commissioner. Mr. Tucker stated that this bill is long overdue, and for the reasons that Mr. MacKenzie cited, they support the bill.

OPPONENTS

None.

QUESTIONS

Rep. Wallin asked Mr. Schulke if the sale is made of stock and the broker makes the sale and it is discovered within five years that the stock was fraudulent, is the brokerage company responsible and not the salesmen. Mr. Schulke responded that in that situation both the broker and the salesman would be liable.

Rep. Swysgood asked on page 7, line 9, if there was some reason why this was made retroactive. Ms. Schulke responded the statute of limitations now under the Securities Act is eight years from the date of the contract. She commented that was decided by the Supreme Court in early 1985, and this bill is proposed because that statute of limitations is the longest in the country and is a burden on industry. Also, she said, the bill is proposed as a compromise between investor protection and the industry, and is retroactive.

Rep. Wallin asked Ms. Schulke to explain what protection this bill provides to a person that is about to buy a security. Ms. Schulke responded that the person can bring a suit within two years if it is based on registration, or within 5 years if it is based on fraud.

CLOSING

Senator Meyer made no further comments.

SENATE BILL NO. 314 - Senator H. W. "Swede" Hammond, Senate District No. 9, Malta, sponsored the bill, but Rep. Fred Thomas, House District No. 62, presented the bill in his absence. Rep. Thomas stated this bill is an act to exclude fair workers from payment of overtime compensation.

22

Rep. Swysgood asked if the fair operates to make a profit. Mr. Chiesa responded that by state law they cannot operate to make a profit, but they have to operate within their budget, and they receive tax funds. He said that during the actual 8 day event, they generate more revenue than expenses.

CLOSING

Rep. Thomas made no further comments.

EXECUTIVE ACTION

ACTION ON SENATE BILL NO. 313

Chairman Kitselman moved to reconsider action on Senate Bill No. 313. The motion carried unanimously.

Rep. Driscoll moved the amendment, on page 13, line 21, strike line 21 in its entirety, and line 22 through the word "that". The motion carried unanimously.

Rep. Driscoll moved that Senate Bill No. 313 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON SENATE BILL NO. 299

Rep. Swysgood moved that Senate Bill No. 299 BE CONCURRED IN. The motion carried unanimously.

ACTION ON SENATE BILL NO. 314

Rep. Hansen moved that Senate Bill NO. 314 BE NOT CONCURRED IN.

Rep. Thomas moved a substitute motion that Senate Bill No. 314 BE CONCURRED IN.

Rep. Brandewie commented that it was not right to save money at the expense of people that are working at \$3.60 per hour.

Rep. Bachini commented that he sees no need for the bill.

Rep. Pavlovich made a substitute motion that Senate Bill No. 314 BE TABLED. The motion carried unanimously.

ACTION ON SENATE BILL NO. 186

Rep. Thomas moved that Senate Bill No. 186 BE CONCURRED IN.

Rep. Thomas moved the amendments proposed by the Insurance Commissioner. The motion carried unanimously.

STANDING COMMITTEE REPORT

MARCH 13

19 37

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report SENATE BILL NO. 299

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. LES KITZELMAN

Chairman

Rep. Norm Wallin will sponsor

MS
THIRD

BLUE

reading copy ()
color

DAILY ROLL CALL

BUSINESS & LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date MARCH 13, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

444-5236
Deputy Securities Commissioner

EXHIBIT 5
DATE 3/13/87
SB 299

SB 299 Securities Act - Statute of Limitations. SECTION BY
SECTION REVIEW.

Requested by State Auditor and Commissioner of Securities,
Andrea "Andy" Bennett

Section 1. Amendment to 30-10-305.

Section 30-10-305 sets forth the type of enforcement actions which the Commissioner can bring for violations of the Securities Act of Montana. These include cease and desist orders and injunctive actions.

New subsection (4) provides that no administrative or civil action shall be maintained by the Commissioner for violations of the registration provisions of the Securities Act, unless brought within 2 years after the violation occurs. Section 30-10-201 provides for the registration of securities salesmen, broker-dealers and investment advisers. Sections 30-10-202 through -205 provide for the registration of securities.

New subsection (5) provides a statute of limitations for actions based upon violations of the Securities Act other than registration violations. The period of limitation is 2 years after the discovery by the commissioner or his staff, of the facts constituting the violation. Additionally, a final cut-off of 5 years from the date of the transaction sued upon, is stated.

Section 2. Amendment to 30-10-307.

Section 30-10-307, provides for private civil actions based on violations of the registration sections of the securities act, or for the offer or sale of a security by means of fraud or misrepresentation.

New subsection (5) provides that all private civil actions founded upon violations of the registration provisions of the Securities Act, must be brought within 2 years after the violation occurs.

New subsection (6) provides that private civil actions founded upon fraud or misrepresentation must be brought within 2 years after discovery of the fraud or misrepresentation, or after such discovery should have been made by the exercise of reasonable diligence. A final cut-off of 5 years from the date of the transaction sued upon, is also stated.

Section 3. Retroactive application of statute of limitations.

This section states that the new statute of limitations shall apply retroactively to all securities actions which could have been filed before the effective date of this Act, but which have not been filed within one year after the effective date of this Act. For securities actions which could have been filed before the effective date of this Act, and which will be filed before one year after the effective date of this Act, the current 8-year statute of limitations applies.

Securities Act - Statute of Limitations. JUSTIFICATION.

On October 3, 1985, the Montana Supreme Court ruled that the statute of limitations which applies to civil actions brought pursuant to 30-10-307, MCA, of the Securities Act of Montana, is 8 years. This is the current statute limitations for all private civil actions brought under the Securities Act.

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SB 299

EXHIBIT 6
DATE 3/13/87
SB 299

STATUTES OF LIMITATIONS FOR SECURITIES ACTIONS

<u>State</u>	<u>Statute of Limitations</u>
Alabama	2 years from date of sale of securities
Alaska	3 years from date of sale of securities
Arizona	Securities fraud - 2 years after discovery of fraudulent practice, or after such discovery should have been made by the exercise of reasonable diligence Registration violations - 1 year after violation
Arkansas	5 years from date of sale of securities
California	Securities fraud - 1 year after the discovery of the violation, with a maximum of 4 years
Colorado	Registration violations - 2 years after date of sale of securities Securities fraud - 3 years after discovery or when reasonable person would make discovery, maximum of 5 years from sale
Connecticut	2 years from date of sale of securities
Delaware	2 years from date of sale of securities
Florida	Securities fraud - 2 years from date of discovery of facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, with a 5 year maximum
Georgia	2 years from date of sale of securities
Hawaii	5 years from date of sale or 2 years after discovery of the facts constituting the violation, but never more than 7 years after the date of the sale
Idaho	3 years from date of sale of securities

Illinois	3 years from date of discovery of the violation with a maximum of 5 years from date of sale
Indiana	3 years after discovery of the violation
Iowa	Registration violations - 2 years from date of sale of securities Securities fraud - 2 years after plaintiff receives notice of the facts constituting the violation, with a maximum of 5 years after the violation occurs
Kansas	No controlling authority
Kentucky	3 years after date of sale of securities
Louisiana	2 years after date of sale of securities
Maine	Registration violations - 2 years from date of sale of securities Securities fraud - 2 years after the discovery of the violation or after discovery should have been made by the exercise of reasonable diligence
Maryland	Registration violations - 1 year from date of sale Securities fraud - 1 year after discovery, but no more than 3 years after date of sale
Massachusetts	2 years after date of sale
Michigan	Registration violations - 2 years after date of sale Securities fraud - 2 years after discovery of violation, with maximum of 4 years
Minnesota	3 years after the date of violation
Mississippi	Registration violations - 2 years from date of violation Securities fraud - 2 years after discovery of act constituting violation
Missouri	2 years after the sale
Nebraska	2 years after the sale
Nevada	2 years after the sale

New Hampshire	6 years after first payment of money in the transaction
New Jersey	Within 2 years of discovery of the violation
New Mexico	Within 2 years of discovery of the violation, with a maximum of 5 years
New York	2 years from date of discovery of the violation, with a maximum of 6 years
North Carolina	2 years after the sale of securities
North Dakota	3 years from date of sale or contract for sale, or not more than 1 year after the purchaser has received information as to the matter upon which the proposed recovery is based
Ohio	2 years after discover of facts constituting the violation, maximum of 4 years from date of sale
Oklahoma	Registration violations - 3 years after date of sale Securities fraud - 2 years after discovery of violation
Oregon	3 years after sale of securities
Pennsylvania	Registration violations - lesser of 2 years from date of violation or 1 year after plaintiff knew of the violation Securities fraud - 1 year after discovery of violation, maximum of 4 years
Rhode Island	No controlling authority.
South Carolina	3 years after date of sale
South Dakota	3 years after date of sale
Tennessee	Lesser of 2 years after th violation or 1 year from date of discovery
Texas	Registration violation - 3 years after date of sale Securities fraud - 3 years after discovery of violation, with maximum of 5 years from date of sale of securities
Utah	2 years after date of discovery with a maximum of 4 years from date of sale

Vermont	2 years from date of sale of securities
Virginia	2 years from date of sale of securities
Washington	Registration violations - 3 years from date of violation
	Securities fraud - 3 years from date of discovery of violation
West Virginia	3 years from date of sale of securities
Wisconsin	3 years from date of sale of securities
Wyoming	2 years from date of sale of securities

BUSINESS AND LABOR

BILL NO. SENATE BILL NO. 299

DATE MARCH 13, 1987

SPONSOR SENATOR DARRYL MEYER

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

SENATE BILL NO. 299

INTRODUCED BY MEYER, WALLIN

BY REQUEST OF THE STATE AUDITOR AND SECURITIES COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO PRESCRIBE THE STATUTE OF LIMITATIONS FOR CIVIL AND ADMINISTRATIVE ACTIONS BROUGHT PURSUANT TO THE SECURITIES ACT OF MONTANA; AMENDING SECTIONS 30-10-305 AND 30-10-307, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-10-305, MCA, is amended to read:

"30-10-305. Injunctions and other remedies -- limitations on actions. (1) Whenever if it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder, he may in his discretion:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that remains in effect until 10 days after the hearing on the allegations contained in the cease and desist order is held or that

becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or

(b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, he is entitled to reasonable attorneys' fees as fixed by the court.

(2) A final judgment or decree, criminal or civil, determining that a person has violated parts 1 through 3 of this chapter in an action brought by the commissioner for such violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in an action brought against him under 30-10-307.

(3) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed \$5,000 per violation upon a person found to have engaged in any act or practice constituting a violation of any provision of parts 1 through

1 3 of this chapter or any rule or order issued under parts 1
 2 through 3 of this chapter. The fine is in addition to all
 3 other penalties imposed by the laws of this state and must
 4 be collected by the commissioner in the name of the state of
 5 Montana and deposited in the general fund. Imposition of any
 6 fine under this subsection is an order from which an appeal
 7 may be taken pursuant to 30-10-308. If any person fails to
 8 pay a fine referred to in this subsection, the amount of the
 9 fine is a lien upon all of the assets and property of such
 10 person in this state and may be recovered by suit by the
 11 commissioner and deposited in the general fund. Failure of
 12 the person to pay a fine also constitutes a forfeiture of
 13 his right to do business in this state under parts 1 through
 14 3 of this chapter.

15 (4) (a) No administrative or civil action may be
 16 maintained by the commissioner under this section to enforce
 17 any liability founded on a violation of 30-10-201 through
 18 30-10-205 unless it is brought within 2 years after the
 19 violation occurs.

20 (b) No administrative or civil action may be
 21 maintained by the commissioner under this section to enforce
 22 any liability founded on a violation of parts 1 through 3 of
 23 this chapter or any rule or order issued thereunder, except
 24 30-10-201 through 30-10-205, unless it is brought within 2
 25 years after discovery by the commissioner or his staff of

1 the facts constituting the violation.

2 (c) In no event may an action be maintained under this
 3 section to enforce any liability founded on a violation of
 4 parts 1 through 3 of this chapter or any rule or order
 5 issued thereunder unless it is brought within 5 years after
 6 the transaction on which the action is based."

7 Section 2. Section 30-10-307, MCA, is amended to read:
 8 "30-10-307. Civil liabilities -- limitations on
 9 actions. (1) Any person who offers or sells a security in
 10 violation of any provisions of 30-10-202 through 30-10-205
 11 or offers or sells a security by means of fraud or
 12 misrepresentation is liable to the person buying the
 13 security from him, who may sue either at law or in equity to
 14 recover the consideration paid for the security, together
 15 with interest at 10% per annum from the date of payment,
 16 costs, and reasonable attorneys' fees, less the amount of
 17 any income received on the security, upon the tender of the
 18 security, or for damages if he no longer owns the security.
 19 Damages are the amount that would be recoverable upon a
 20 tender less:

21 (a) the value of the security when the buyer disposed
 22 of it; and

23 (b) interest at 10% per annum from the date of
 24 disposition.

25 (2) Every person who directly or indirectly controls a

1 seller liable under subsection (1), every partner, officer,
 2 or director (or person occupying a similar status or
 3 performing similar functions) or employee of such a seller,
 4 and every broker-dealer or salesman who participates or
 5 materially aids in the sale is liable jointly and severally
 6 with and to the same extent as the seller if the nonseller
 7 knew, or in the exercise of reasonable care could have
 8 known, of the existence of the facts by reason of which the
 9 liability is alleged to exist. There shall be contribution
 10 among the several persons so liable.

11 (3) Any tender specified in this section may be made
 12 at any time before entry of judgment. A cause of action
 13 under this statute survives the death of any person who
 14 might have been a plaintiff or a defendant. No person may
 15 sue under this section:

16 (a) if the buyer has received a written offer, at a
 17 time when he owned the security, to refund the consideration
 18 paid, together with interest at 10% per annum from the date
 19 of payment, less the amount of any income received on the
 20 security and he failed to accept the offer within 30 days of
 21 its receipt; or

22 (b) if the buyer has received a written offer at a
 23 time when he did not own the security in the amount that
 24 would be recoverable under subsection (1) upon a tender
 25 less:

1 (i) the value of the security when the buyer disposed
 2 of it; and

3 (ii) interest at 10% per annum from the date of
 4 disposition.

5 (4) No person who has made or engaged in the
 6 performance of any contract in violation of any provision of
 7 parts 1 through 3 of this chapter or any rule or order
 8 hereunder or who has acquired any purported right under any
 9 such contract with knowledge of the facts by reason of which
 10 its making or performance was in violation may base any suit
 11 on the contract. Any condition, stipulation, or provision
 12 binding any person acquiring any security to waive
 13 compliance with any provision of parts 1 through 3 of this
 14 chapter or any rule or order hereunder is void as against
 15 public policy and in the public interest.

16 (5) (a) No action may be maintained under this section
 17 to enforce any liability founded on a violation of 30-10-202
 18 unless it is brought within 2 years after the violation
 19 occurs.

20 (b) No action may be maintained under this section to
 21 enforce any liability founded on fraud or misrepresentation
 22 unless it is brought within 2 years after discovery of the
 23 fraud or misrepresentation on which the liability is founded
 24 or after such discovery should have been made by the
 25 exercise of reasonable diligence.

34

1 (c) In no event may an action be maintained under this
2 section to enforce any liability founded on fraud or
3 misrepresentation unless it is brought within 5 years after
4 the transaction on which the action is based."

5 NEW SECTION. Section 3. Extension of authority. Any
6 existing authority of the securities commissioner to make
7 rules on the subject of the provisions of this act is
8 extended to the provisions of this act.

9 NEW SECTION. Section 4. Applicability. Sections 1 and
10 2 apply retroactively, within the meaning of 1-2-109, to a
11 securities transaction occurring prior to the effective date
12 of this act for which no action has been commenced within 1
13 year from the effective date of this act.

14 NEW SECTION. Section 5. Effective date. This act is
15 effective on passage and approval.

-End-